



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1998/25
26 June 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fiftieth session
3-28 August 1998
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Views of the six human rights treaty bodies on the Preliminary
Conclusions of the International Law Commission

Report of the Secretary-General

1. At its forty-ninth session, the Sub-Commission adopted resolution 1997/41 in which it requested the Secretary-General to bring the Preliminary Conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties, to the attention of the six human rights treaty bodies, and to ask them to transmit their views thereon to the ILC and the Sub-Commission. The present report is submitted in accordance with that request.

2. The International Law Commission adopted Preliminary Conclusions on reservations to normative multilateral treaties including human rights treaties at its forty-ninth session (12 May to 18 July 1997) (A/52/10, para. 157 et seq.). By letter of 24 November 1997, Mr. Alain Pellet, Chairman of the International Law Commission and ILC Special Rapporteur on the issue of reservations to treaties, transmitted to the Human Rights Committee the text of the ILC's Preliminary Conclusions for information and comments. At its sixty-second session (23 March to 9 April 1998), the Human Rights Committee

took note of the ILC's Preliminary Conclusions, discussing them in closed session in the light of its own general comment No. 24 (52) on issues relating to reservations made upon ratification or accession to the International Covenant on Civil and Political Rights or the Optional Protocols thereto. The Committee undertook to study the preliminary conclusions more carefully and to formulate comments at a later stage. It expressed concern about the views expressed by the ILC in paragraph 12 of its Preliminary Conclusions, in which it "emphasizes that the above conclusions are without prejudice to the practices and rules developed by monitoring bodies within regional contexts". In this connection, the Committee considered that regional monitoring bodies are not the only intergovernmental institutions which participate in and contribute to the development of practices and rules. Universal monitoring bodies, such as the Human Rights Committee, play no less important a role in the process by which such practices and rules develop; the Committee is therefore entitled to participate in and contribute to such development. In this context the Committee stressed that the proposition enunciated by the Commission in paragraph 10 of the Provisional Conclusions is subject to modification as practices and rules developed by universal and regional monitoring bodies gain general acceptance. The Committee so informed the ILC by letter dated 9 April 1998. At its sixty-third session in July 1998 the Committee shall continue its consideration of the ILC's Preliminary Conclusions.

3. The Preliminary Conclusions were similarly brought to the attention of the other committees, which are in the process of examining their implications. At the 9th meeting of persons chairing the human rights treaty bodies, held at Geneva in February 1998, the chairpersons considered the ILC's Preliminary Conclusions and drew attention to the emphasis attached in the Vienna Declaration and Programme of Action to the importance of limiting the number and extent of reservations to human rights treaties and welcomed the recognition contained in the text that treaty monitoring bodies have an important competence in relation to reservations. They considered, however, that the Preliminary Conclusions were unduly restrictive in other respects and did not accord sufficient attention to the fact that human rights treaties, by virtue of their subject-matter and the role they recognize to individuals, cannot be placed on precisely the same footing as other treaties with different characteristics.

4. The chairpersons believe that the capacity of a monitoring body to perform its function of determining the scope of the provisions of the relevant convention cannot be performed effectively if it is precluded from exercising a similar function in relation to reservations. They recall the two general recommendations adopted by the Committee on the Elimination of Discrimination against Women and note the proposal by that Committee to adopt a further recommendation on the subject in conjunction with the fiftieth anniversary of the Universal Declaration of Human Rights and express their firm support for the approach reflected in general comment No. 24 adopted by the Human Rights Committee.
